



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL-S MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 28, 2019 and deemed received by the tenant five days later, on July 3, 2019, under section 90 of the *Act*. The landlords provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlords, I find the landlords served the tenant with the documents pursuant to section 89 of the *Act*.

Preliminary Matter: Addendum to Monetary Claim

The landlord submitted a document entitled an addendum to the landlord's monetary claim on September 4, 2019. This document requested additional monetary compensation for aggravated damages, loss of value of the property, fees, penalties and disbursements from selling the property and loss of rental income.

Residential Tenancy Branch Rules of Procedure, Rule 2.2 states that application is limited to what is stated in the application. Accordingly, I cannot consider the additional claims submitted on September 4, 2019 unless the applicant has amended his application.

Residential Tenancy Branch Rules of Procedure, Rule 4.1 states that an applicant may amend their claim by completing the prescribed Amendment to an Application for Dispute Resolution form and filing the form with the Residential Tenancy Branch. However, in this matter, I find that the landlord did not properly amend his claim because he did not complete or file the prescribed form.

In the alternative, *Residential Tenancy Branch Rules of Procedure*, Rule 4.2 permits parties to request an amendment to their application at the hearing. *Rules of Procedure* 4.2 states that:

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

However, I find that in these circumstances it is unlikely that the respondent could reasonably anticipate that the landlord would amend his claim to include these additional monetary claims at the hearing. Accordingly, I do not grant the landlord's request to amend its application to include his additional monetary claims.

The landlord's claims for additional monetary compensation for aggravated damages, loss of value of the property, fees, penalties and disbursements from selling the property and loss of rental income submitted on September 4, 2019 are dismissed with leave to re-apply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on June 1, 2018. The monthly rent was \$2,100.00. The tenant paid a security deposit of \$1,050.00. The landlord has already deducted \$100.00 from the security deposit pursuant to a previous Residential Tenancy Branch order dated April 17, 2019. The landlord had obtained an order of possession based upon an allegation that the tenant was impermissibly operating a short-term vacation rental out of the rental unit. Related Residential Tenancy Branch files are referenced on the first page of this decision.

The landlord testified that the tenant moved out on May 5, 2019 and she did not participate in a move-out inspection. The landlord testified that he tried to schedule the move-out inspection but the tenant would not co-operate.

The landlord claimed unpaid rent from April 1, 2019 to May 4, 2019. The landlord claimed unpaid utility charges of \$10.00 from April 29, 2019 to May 5, 2019.

The landlord testified that the tenant left the rental unit in a damaged condition and he claimed the following repair costs:

- Replacement of locks: \$125.00;
- Painting: \$4,000.00;
- Cleaning: \$500.00;
- Stovetop replacement: \$565.60; and,
- Carpet replacement: \$2,080.12.

The landlord provided photographs of the damage and copies of repair invoices.

The landlord also claimed \$184.00 for multiple missing items including a window screen, shower curtain, wood shelf and a wall ornament.

In addition, the landlord claimed \$3,000.00 for strata fines relating to the tenant's impermissible operation of a short-term vacation rental out of the rental unit. The landlord provided a copy of the strata council Form B evidencing the strata fines assessed against the rental unit for the operation of a short-term vacation rental.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will address each of the landlord's claims individually:

i. Claim for unpaid rent

I find that the tenants have not paid rent for April 2019. Pursuant to section 7(1) of the *Act* which states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." I find the landlord is entitled to a monetary award of \$2,100.00 for unpaid rent in April 2019.

I also find that the Tenant owes \$350.00 for overholding the rental unit for the period of May 1, 2019 to May 5, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In this matter, a previous arbitration order ended the tenancy in April 2019. However, I am satisfied from the landlord's' undisputed testimony that the tenants continue to overhold the rental unit up to May 5, 2019.

Residential Tenancy Policy Guideline #3 states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in

possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenant remained in the unit for the full rental periods of May 1, 2019 to May 5, 2019, the landlords are entitled to receive a total of \$350.00 in overholding damages (five days at the per diem rate of \$70.00).

ii. Claim for unpaid utilities

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim. I find that the landlord has not provided sufficient evidence establish that the tenant has an obligation to reimbursed the claimed utilities. Accordingly, I dismiss the landlord's claim for reimbursement of utilities.

iii. Replacement of locks

I accept the landlord's undisputed testimony that the locks needed to be changed because the tenant impermissibly operated a short-term vacation rental out of the rental unit. I grant the landlord's application for \$125.00 for lock change expenses.

iv. Painting

The landlord provided several photographs showing some gouges and holes in the walls that needed to be repaired and painted. However, I am not satisfied that the landlord has provided sufficient evidence to prove the actual monetary loss he has sustained. I find that the claimed painting expenses of \$4,000.00 is not supported by the evidence submitted. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages.

Residential Tenancy Policy Guideline No. 16 defines nominal damages as:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that walls have been damaged but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$500.00 to repair the walls.

v. Cleaning

I am not satisfied that the landlord has sustained any damages for cleaning expenses. I find that the photographs submitted by the landlord do not show a need for significant cleaning services. The tenants are only required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*. In the absence of sufficient evidence, I dismiss the landlord's claim for cleaning costs.

vi. Stovetop replacement

The landlord provided photographs showing damage to the finish on the stovetop. Section 32(1) of the *Act* provides that the tenant "...must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant." However, in this matter there is no evidence that the damage to the stovetop was caused by the tenant's actions or neglect as opposed to normal wear and tear. As such, I do not find that the landlords have established their claim for damage to the stovetop and I dismiss this claim.

vii. Carpet replacement

The landlord has provided multiple photographs showing extensive damage to the carpets. Based upon the photographs and the landlord's undisputed testimony, I grant the landlord a monetary order for \$2,080.12 for carpet replacement.

viii. Claim for missing items

Based the photographs provided and the landlord's undisputed testimony, I find that there are multiple missing items including a window screen, shower curtain, wood shelf and a wall ornament. I grant the landlord a monetary order of \$184.00 for the missing items.

ix. Strata fine

Based on the landlord's undisputed testimony and the strata council Form B, I find that the landlord has incurred strata fines in the amount of \$3,000.00 as a result of the tenant's impermissible operation of a short-term vacation rental service out of the rental unit. I grant the landlord a monetary order of \$3,000.00 for the strata fine.

I find that the amount of the deposit held by the landlord can be deducted from the amount owed to the landlord pursuant or section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for partial recovery of the filing fee.

Accordingly, I grant the landlord a monetary order in the amount of \$7,489.12 as set forth below:

<u>Item</u>	<u>Amount</u>
April 2019 rent	\$2,100.00
May 2019 overholding damages	\$350.00
Lock rekeying	\$125.00
Painting	\$500.00
Carpet replacement	2,080.12
Missing items	\$184.00
Strata fine	\$3,000.00
Less: Security deposit	-\$950.00
Filing fees	\$100.00
Total	\$7,489.12

Conclusion

I grant the landlord a monetary order in the amount of **\$7,489.12**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

The landlord's claims for additional monetary compensation for aggravated damages, loss of value of the property, fees, penalties and disbursements from selling the property and loss of rental income submitted on September 4, 2019 are dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 16, 2019

Residential Tenancy Branch